IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Bail Appl..No. 4307 of 2007()

CRIME NO.98/07 OF KANAKAKKUNNU P.S.
CRMP.1578/2007 of ADDL.DISTRICT COURT-I,MAVELIKKARA

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PETITIONERS/ACCUSED 1 & 2

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1. SREEVALSAN ALIAS BIJU,
   S/O SREEDHARAN PILLAI, AGED 37 YEARS,
   RESIDING AT UNJALATHEN HOUSE, KANNIMEL MURI,
   CHEPPAD OF MUTHUKULAM VILLAGE.

2. BIJU, S/O MADHAVAN ACHARI,
   AGED 35 YEARS, RESIDING AT DHARMALAYAM,
   CHEPPAD, KUNNIMEL MURI, MUTHUKULAM VILLAGE.

BY ADV. SRI.N.SURESH

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
   KANAKAKKUNNU POLICE STATION, KANAKAKUNNU.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4307 of 2007

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Dated this the 16th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2 and they face allegations under Section 326 I.P.C. The crux of the allegations is that consequent to an incident which took place at 10 a.m. earlier on the date of the incident, the accused attacked the defacto complainant resulting in injuries, including a fracture. The injured was taken to the doctor. X-ray was confirmed later. F.I. statement was lodged and the crime was registered. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. There is animosity between the accused and the defacto complainant. A prior case has been filed by the mother of the defacto complainant. That fact has been suppressed in the F.I. statement. The totality of circumstances must lead the court to the conclusion that the petitioners are not guilty and that the allegations are vexatiously raised, submits the counsel for the petitioners.

2. The learned Prosecutor opposes the application. He submits that the sequence of events does not generate any doubt about the

acceptability of the allegations raised against the accused persons. A grievous hurt - fracture of ulna, has been suffered by the defacto complainant and he has promptly made a complaint also, submits the Prosecutor.

3. I find merit in the opposition raised by the learned Prosecutor. I am satisfied that this is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. I find no reason to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioners.

5. This application is hence dismissed. Needless to say, if the petitioners surrender before the Investigating Officer or the learned Magistrate having jurisdiction and apply for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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